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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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|------------------------|---|
| Proceeding | 91212024 |
| Party | Plaintiff Republic Technologies (NA), LLC |
| Correspondence Address | ANTHONY J MCSHANE NEAL GERBER & EISENBERG 2 N LASALLE ST STE 1700 CHICAGO, IL 60602 UNITED STATES amcshane@ngelaw.com, jcohen@ngelaw.com, temauelson@ngelaw.com, lpalumbo@ngelaw.com, afraker@ngelaw.com, ECFDocket@ngelaw.com |
| Submission | Motion to Compel Discovery |
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| Signature | /Antony McShane/ |
| Date | 11/05/2014 |
| Attachments | Discovery.pdf(1742477 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial
No. 85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

**Second Amended Notice
of Opposition**

Opposition No. 91212024

OPPOSER'S REQUEST FOR RULE 56(D) DISCOVERY

Applicant seeks summary judgment on the basis of its conclusory assertion that its mark is not similar to that of Opposer. In doing so, Applicant introduces no evidence of record and completely ignores all other relevant likelihood of confusion factors, such as the relatedness of the goods on which the marks are used, the similarity of channels of trade, the marketplace conditions and the care exercised by consumers, the fame of Opposer's long-standing mark, and the lack of similar marks in use on similar goods. Although Applicant has produced some documents that may bear on these factors as they relate to Applicant's products, Applicant's testimony is necessary to explain, understand and authenticate its documents. Without such testimony, Opposer is unable to effectively oppose Applicant's motion. Likewise, without such testimony, the Board cannot make a fully informed ruling on the motion. Accordingly, pursuant

to Federal Rule of Civil Procedure 56(d), Opposer requests leave to take Applicant's testimony to enable it to respond to Applicant's motion.

I. Procedural Background and Applicant's Unexplained Documents

During the discovery period in these proceedings, Applicant produced documents bearing Bates Nos. 1 – 120 in response to Opposer's first set of requests bearing on the various factors relevant to likelihood of confusion, Opposer's original grounds for opposition. McShane Decl. at ¶¶ 2 and 3. Many of Applicant's documents were illegible or unintelligible as to their bearing on likelihood of confusion, as Applicant did not explain any of the documents or provide relevant context. McShane Decl. at ¶3. However, Applicant's discovery responses revealed that, regardless of any potential confusion, Applicant's application was void *ab initio* because Applicant did not use the S.O.B mark in commerce and did not maintain a bona fide business establishment in the Dominican Republic, as it alleged in the prosecution of its application. *Id.* Opposer thus served Applicant with a second set of discovery requests seeking documents and information relevant to Applicant's use of the mark and Applicant's presence in the Dominican Republic. McShane Decl. at ¶ 4. In response, Applicant produced documents bearing Bates Nos. 121 – 159. These documents confirmed that Applicant did not have, as it claimed, a valid basis for registration under Sections 1(a) and 44(e) of the Lanham Act. McShane Decl. at ¶ 5. Accordingly, Opposer therefore amended its Notice of Opposition to allege that both of Applicant's claimed bases for registration were invalid and moved for summary judgment on both counts. McShane Decl. at ¶ 7.

In responding to Opposer's motion for summary judgment, Applicant relied upon a group of unexplained and unauthenticated documents, a number of which were not produced during discovery, purporting to relate to its sales and promotional activities dating back to 2011 and its activities in the Dominican Republic. McShane Decl. at ¶ 9. Indicative of Applicant's document

production generally, these documents are largely illegible, unintelligible or irrelevant to Applicant's claims. *Id.* Nonetheless, the Board found that they created genuine issues of material fact regarding Applicant's use of the mark in commerce and its presence in the Dominican Republic, and denied Opposer's motion. McShane Decl. at ¶ 10. In doing so, the Board also invited Applicant to amend its application to allege Section 1(b) of the Lanham Act as its basis for registration. McShane Decl. at ¶ 11. Thus, Applicant filed a motion to amend its application to seek registration under Section 1(b) rather than Sections 1(a) and 44(e). At the same time, Applicant also filed the present Motion for Summary Judgment on the issue of likelihood of confusion. McShane Decl. at ¶ 12.

In response to Applicant's motion to amend, Opposer has moved to amend its Notice of Opposition to add a claim of fraud, because Applicant's false representations of its use of the mark in commerce and its domestic industry in the Dominican Republic render its application void and cannot be cured by amending an application to a Section 1(b) basis. McShane Decl. at ¶ 13.

In response to Applicant's Motion for Summary Judgment, Opposer submits this request pursuant to Rule 56 (d) for leave to take Applicant's testimony to obtain facts that remain entirely within the possession of Applicant.

II. There Is an Insufficient Record on the Factors Relevant to Likelihood of Confusion

Rule 56 of the Federal Rules of Civil Procedure provides that a motion for summary judgment must be supported by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations, ... admissions, interrogatory answers, or other materials." Fed. R. Civ. P. 56(c). Summary judgment is appropriate only if the moving party demonstrates the absence of evidence to

support the nonmoving party's case, and that it is entitled to judgment as a matter of law. *Sweats Fashions Inc. v. Pannill Knitting Co.*, 833 F.2d 1560, 4 USPQ2d 1793, 1795-1796 (Fed. Cir. 1987), citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the movant meets this burden, then the non-movant bears the burden of producing admissible, credible evidence sufficient to support a reasonable judgment in Opposer's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

Here, the sole basis for Applicant's Motion is that the marks at issue are sufficiently dissimilar to avoid the likelihood of confusion. Motion at 4-7. It is well established, however, that likelihood of confusion is determined by an analysis of multiple factors, including: (i) the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression; (ii) the similarity or dissimilarity and nature of the goods described in an application or registration or in connection with which a prior mark is in use, (iii) the similarity or dissimilarity of established, likely-to-continue trade channels; (iv) the conditions under which and buyers to whom sales are made, i.e. "impulse" vs. careful, sophisticated purchasing; (v) the fame of the prior mark, (vi) the number and nature of similar marks in use on similar goods; (vii) the nature and extent of any actual confusion; (viii) the length of time during and the conditions under which there has been concurrent use without evidence of actual confusion; (ix) the variety of goods on which a mark is or is not used; (x) the market interface between the applicant and the owner of a prior mark; (xi) the extent to which applicant has a right to exclude others from use of its mark on its goods; (xii) the extent of potential confusion; and (xiii) any other established fact probative of the effect of use. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973). While not all factors may be relevant or of equal weight in a given case, *In re Dixie Restaurants, Inc.*, 105 F.3d 1405, 1406-

07, 41 USPQ2d 1531, 1533 (Fed. Cir. 1997), likelihood of confusion must be analyzed in consideration of “evidence emanating from the only place where confusion can occur, i.e. the marketplace.” *In re E. I. du Pont de Nemours & Co.* at 567.

Applicant has not offered any documents, affidavits, declarations or testimony in support of its Motion. As a result, the record on summary judgment at this point consists only of the pleadings, the file of the subject application, and Opposer’s pleaded registrations. *See* TBMP 528.05(a) (providing that “[a]ny other evidence which a party wishes to have considered upon summary judgment must be submitted in connection with the summary judgment motion”). Thus, Applicant attempts to meet its burden under Rule 56(c) by citing only to depictions of the marks at issue, completely without context or any evidence emanating from or relating to the marketplace, such as its channels of trade, the conditions under which its products will be purchased, the extent to which it has a right to exclude others from use of its mark, or any of the other relevant factors. These marketplace factors are especially important in a case such as this one, in which Applicant has made only de minimis, if any, use of its mark in commerce, and in which Opposer’s mark has been used and registered for more than a century in a variety of different designs and stylizations.

Indeed, the Board cannot merely compare the marks, as Applicant appears to argue. Rather, the Board must consider *all* factors for which it has evidence, including those that reflect marketplace conditions. *In re E. I. du Pont de Nemours & Co.* at 567-68 (holding that there is “no warrant ... for discarding *any* evidence bearing on the question”) (emphasis in original); *Hewlett-Packard Co. v. Packard Press Inc.*, 62 USPQ2d 1001, 1004 (Fed. Cir. 2002) (finding error where Board refused to consider relatedness of goods and services). Moreover, because the Board must consider every factor for which it has evidence, and Applicant has failed to establish

a record as to every factor except the similarity of the marks, the evidence required to meet Opposer's burden remains in Applicant's possession and control. Opposer, and the Board, cannot conduct an appropriate likelihood of confusion analysis without the benefit of Applicant's testimony relating to, for example, Applicant's channels of trade, advertisements, marketing efforts, channels of trade, intended consumers and intention is adopting its mark. Similarly, although some of Applicant's documents may bear on the likelihood of confusion factors, without explanation, context or authentication provided by Applicant, they are meaningless. Applicant's testimony explaining its documents and on the likelihood of confusion factors is therefore necessary for the resolution of Applicant's motion.

III. Opposer Should Be Allowed to Take Applicant's Testimony to Establish an Adequate Record

Rule 56(d) provides that a non-movant may obtain additional discovery if it shows by declaration that it cannot present facts essential to justify its opposition. *See also* TBMP § 528.06; *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847, 852-53 (Fed. Cir. 1992) (reversing summary judgment for failure to grant petitioner essential discovery). The Rule is liberally interpreted, and discovery should be permitted when the non-movant demonstrates a need for discovery reasonably directed to essential facts. *McCormick Delaware, Inc. v. Williams Foods, Inc.*, 2001 TTAB LEXIS 207 at *18-19 (TTAB Feb. 14, 2001). This is especially true when the necessary information sought is within the moving party's sole control. *Orion Group Inc. v. The Orion Insurance Co. P.L.C.*, 17 U.S.P.Q.2d (BNA) 1923, 1925 (TTAB 1989).

Here, Applicant is in control of relevant information and explanation as to its documents and the likelihood of confusion factors for which it has failed to establish a record, such as the similarity of channels of trade, the marketplace conditions under which sales are made and the

care exercised by consumers, and the extent to which Applicant has a right to exclude others from use of its mark on its goods. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d at 1361, 177 USPQ at 567. As set forth above, these facts are essential to determining likelihood of confusion. The manifestly deficient factual record and Applicant's unexplained documents are not sufficient for Opposer to effectively oppose Applicant's Motion or for the Board to rule on the Motion. Accordingly, Opposer should be allowed to take Applicant's testimony to establish a factual record on which to base its response to Applicant's Motion. Specifically, Opposer requires the testimony of Applicant's principal, Fran Shon Brooks, on the following matters:

- The products intended to be offered by Applicant under the S.O.B mark, including (a) the intended or expected purchasers of the products; (b) the channels of trade by which such products will be offered and sold; and (c) current inventory of the products;
- The marketing or intended marketing of Applicant's products intended to be sold under the S.O.B mark, including (a) the means by which each is currently or intended to be marketed, advertised or promoted; (b) the current or intended geographic scope of such marketing, advertising and promotion; (c) packaging, labeling or promotional literature for each product; and (d) the current or expected annual expenditures for each such marketing, advertisement and promotion;
- Applicant's plans for the future marketing, promotion or distribution of any products that are currently or are intended to be distributed, sold or offered for sale under the mark;
- The creation, development, selection, and adoption of the S.O.B mark, including the process of, reasons for, and all individuals involved in the selection and adoption of the marks;
- Applicant's decision to apply for and applications to register the marks;
- All bases for Applicant's contention that it used the mark in interstate commerce at the time of filing its trademark applications;
- All bases for Applicant's contention that it maintained a bona fide and effective business establishment in the Dominican Republic at the time its Dominican Republic trademark registration issued;

- All documents produced by Applicant in these proceedings, including all documents purportedly relating to (a) its preparations for and use of the S.O.B mark in commerce; (b) design and manufacturing of products using the mark; (c) its advertising, marketing and promotion of products using the mark; and (d) its activities and presence in the Dominican Republic; and
- All representations and facts provided by Applicant in response to Opposer's interrogatories.

IV. Conclusion

Likelihood of confusion must be determined in consideration of all factors for which the record contains evidence, including the relatedness of the goods on which the marks are used, the similarity of channels of trade, the marketplace conditions and the care exercised by consumers, the fame of Opposer's long-standing mark, and the lack of similar marks in use on similar goods. Applicant's Motion for Summary Judgment, however, is based on its mere conclusory assertion that the marks at issue are dissimilar and does not address any of the other relevant factors. Because Applicant does not introduce any supporting documents, affidavits, declarations or testimony, the present record contains no evidence bearing on any factors other than the similarity of the marks at issue. Although some documents produced by Applicant may relate to these factors, Applicant's testimony is necessary to explain, understand and authenticate the documents, and to provide evidence as to the relevant factors. Without Applicant's testimony, Opposer is unable to produce credible, admissible evidence to effectively oppose Applicant's motion. Opposer therefore requests leave to take Applicant's testimony pursuant to Rule 56(d).

Respectfully submitted,

Date: November 5, 2014

/Antony J. McShane/
One of the Attorneys for Opposer,
Republic Technologies, N.A.

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CERTIFICATE OF SERVICE

I, Andrew S. Fraker, an attorney, state that, pursuant to 37 CFR §§ 2.101, 2.111, and 2.119, I caused a true and correct copy of the foregoing **Opposer's Motion for Rule 56(d)**

Discovery to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036

via U.S. Mail, with a courtesy copy sent via email, on November 5, 2014.

/Andrew S. Fraker /
Andrew S. Fraker

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Opposition No. 91212024

DECLARATION OF ANTONY J. MCSHANE

I, Antony J. McShane, declare:

1. I am licensed to practice law in the State of Illinois. I am a partner of the law firm Neal, Gerber & Eisenberg LLP, and serve as counsel to Opposer DRL Enterprises, Inc. (“DRL Enterprises”) in the above-captioned matter.

2. On January 10, 2014, Opposer served Applicant with its First Set of Document Requests and First Set of Interrogatories in the above-captioned matter, seeking documents and information relevant to the various factors used to determine likelihood of confusion. Attached hereto as Exhibits A and B are true and correct copies of Opposer’s First Set of Interrogatories and First Set of Document Requests.

3. In response, Applicant produced documents bearing Bates Nos. 1-120. Applicant did not specifically identify the documents, explain them or provide additional context beyond its

assertion that the documents were responsive to Opposer's requests. Many of the documents were unintelligible as to their bearing on likelihood of confusion. However, the documents indicated that Applicant's application was void *ab initio* because Applicant did not use its mark in commerce when it filed its application and did not maintain a bona fide business establishment in the Dominican Republic, as Applicant stated in its application.

4. On April 21, 2014, Opposer served Applicant with its Second Set of Document Requests and Second Set of Interrogatories, seeking documents and information relevant to Applicant's use of its mark in commerce and Applicant's presence in the Dominican Republic. Attached hereto as Exhibits C and D are true and correct copies of Opposer's Second Set of Interrogatories and Second Set of Document Requests.

5. In response, Applicant produced documents bearing Bates Nos. 121-159. Applicant again did not specifically identify the documents, explain them or provide additional context beyond its assertion that the documents were responsive to Opposer's requests. Many of the documents were illegible, unintelligible or irrelevant. The documents confirmed, however, that Applicant did not use its mark in commerce when it filed its application and did not maintain a bona fide business establishment in the Dominican Republic.

6. On April 21, 2014, discovery closed in this proceeding.

7. On June 12, 2014, Opposer moved to amend its Notice of Opposition to allege that Applicant's application was void *ab initio* as to both of its claimed basis for registration, and moved for summary judgment on both counts.

8. Applicant subsequently produced documents bearing Bates Nos. 160-216, again without specific identification or explanation. Most of these documents were duplicative of Applicant's earlier production and were similarly illegible, unintelligible or irrelevant.

9. On June 27, 2014, Applicant responded to Opposer's Motion for Summary Judgment. Applicant produced documents in support of its response that were largely illegible, unintelligible or irrelevant.

10. Despite the deficiencies in Applicant's documents, the Board found genuine issues of material fact with regard to Applicant's use of the mark in commerce and its presence in the Dominican Republic.

11. The Board also invited Applicant to amend its application to allege Section 1(b) of the Lanham Act as its basis for registration rather than Sections 1(a) and 44(e), which would allow Applicant to avoid having to show use of the mark in commerce when it filed its application and a bona fide industrial establishment in the Dominican Republic.

12. On October 1, 2014, Applicant moved to amend its application to allege Section 1(b) as its basis for registration. Applicant concurrently moved for summary judgment on the issue of likelihood of confusion on the sole basis that the marks at issue are sufficiently dissimilar to avoid confusion. Applicant did not support its motion with any documents or testimony.

13. In response, on October 21, 2014, Opposer moved to amend its Notice of Opposition to allege fraud in the procurement based on Applicant's knowingly false statements in claiming entitlement to registration under Sections 1(a) and 44(e).

14. Applicant filed its Motion for Summary Judgment concurrently with its Motion to Amend.

15. Applicant did not support its Motion for Summary judgment with any documents, affidavits, declarations or testimony.

16. As a result, the record on summary judgment consists only of the pleadings, the

file of the subject application, and Opposer's pleaded registrations.

17. The present record contains no evidence from Applicant related to any of the likelihood of confusion factors except similarity of the marks.

18. Applicant's documents produced to Opposer are largely unintelligible as to their bearing on the likelihood of confusion factors without Applicant's testimony to identify, explain and authenticate them.

19. As a result of the deficiencies in Applicant's evidence, Opposer does not have a sufficient basis to identify genuine issues of material fact with respect to the likelihood of confusion factors. Opposer therefore cannot respond effectively to Applicant's Motion for Summary Judgment.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of November, 2014.



Antony J. McShane

EXHIBIT A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer, Republic Technologies (NA), LLC, hereby requests that Applicant, Brooks Entertainment, Inc., serve upon Opposer sworn answers to the interrogatories set forth below within thirty (30) days. These interrogatories are intended to be continuing in nature and any information that may be discovered subsequent to the service of Applicant's initial answers should be brought to the attention of Opposer through supplemental answers within thirty (30) days following such discovery pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

1. State the full name of Applicant as well as the full name of all of its parents, subsidiaries or affiliated businesses, companies, and other entities, and for each, identify its principal(s) and its state of incorporation or organization.

2. State the full name of each business, company, person, or other entity affiliated with Applicant that has at any time used Applicant's Mark, and for each, identify its principal(s) and its state of incorporation or organization.

3. Identify each transaction by which it is claimed that any rights or license in Applicant's Mark have passed to Applicant, including setting forth the date of each such transaction and identifying the parties to the transaction and all documents related thereto.

4. Identify by common commercial name each and every product marketed, distributed, sold or offered, or intended to be marketed, distributed, sold or offered by Applicant under or in connection with Applicant's Mark or any mark comprising Applicant's Mark, and for each product, identify:

- a. the inclusive dates of use of the marks with such products (if applicable);
- b. the geographic scope of such use;
- c. the price at which the product is sold or intended to be sold;
- d. the annual volume of sales of the product in both dollars and units, if applicable;
- e. the unit sizes in which the product is or will be sold;
- f. each class of purchasers or expected purchasers of the product;
- g. the channels of trade by which the product reaches or will reach the ultimate consumer;
- h. all types of stores or forums in which the product is or will be offered or sold; and

- i. the persons most knowledgeable of each of the foregoing and all documents relating thereto.

5. Explain the reason(s) for Applicant's adoption or intended adoption of Applicant's Mark for each product identified in response to Interrogatory No. 4 as well as the procedure followed by Applicant in its decision, and identify (a) all persons who participated in each such decision, and (b) all documents relating thereto, including but not limited to any trademark search reports.

6. Identify each term, symbol, and/or designation other than Applicant's Mark considered for use on or in connection with each product identified in response to Interrogatory No. 4, and state whether such term, symbol and/or designation was ever used in association with any of the products, explain why or why not, and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

7. Describe in detail each poll, survey, consumer study or market research effort initiated by or on behalf of Applicant relating in any way to Applicant's Mark, or to the packaging, labeling or advertising of the products identified in response to Interrogatory No. 4, and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

8. Identify each employee or agent of Applicant or any independent contractor who has or will have primary responsibility for the following services or functions with respect to each product identified in response to Interrogatory No. 4, and for each such entity, describe in detail the services that have been, are being or will be performed and the inclusive dates of such services:

- (a) package design
- (b) product design
- (c) market research

(d) advertising and promotion

9. Identify all persons involved on behalf of Applicant in planning the past, current and future advertising, marketing, promotion, distribution and sale of products under or in connection with Applicant's Mark.

10. With respect to each product identified in response to Interrogatory No. 4, identify all means by which the product will be, is being or has been advertised or promoted, and identify (a) the annual expenditures for each, and (b) the persons most knowledgeable thereof.

11. Identify every trade show at which each product identified in response to Interrogatory No. 4 has been or will be advertised or promoted.

12. Identify each press or publicity release concerning any product promoted in association with Applicant's Mark issued or published, caused to be issued or published, or intended to be issued or published and, for each such release identify (a) all publications or other media in or through which information contained therein was disseminated, and (b) the person(s) responsible therefor.

13. State whether Applicant has ever received any mail, inquiries, complaints, requests for refunds, orders, checks, or other communications that in any manner were intended for Opposer or that in any way indicated an association or connection between Opposer and Applicant, and if so, with respect to each:

a. Identify:

- i. each such caller, sender, addresser, or communicator;
- ii. the date and place of occurrence;
- iii. the substance of each such communication; and
- iv. the person receiving the communication;

- b. state whether or not any response to, or record of, the communication was made;
- c. identify all persons knowledgeable thereof; and
- d. identify all documents relating thereto.

14. Describe in detail Applicant's awareness and knowledge of Opposer, Opposer's business activities and Opposer's Marks prior to Applicant's selection and adoption of Applicant's Mark and the filing of its Application for the Mark, and identify (a) the person(s) most knowledgeable thereof, and (b) all documents relating thereto.

15. State whether Applicant has ever received any objection to its use or registration of Applicant's Mark other than the instant proceedings, and with respect to each such objection, identify (a) the nature and basis of the objection, (b) when the objection was made, (c) the disposition of the objection, (d) the persons most knowledgeable about the objection, and (e) all documents relating to the objection.

16. State whether Applicant has ever objected to the use or registration of any other mark based on its similarity to Applicant's Mark, and if so, with respect to each such objection, identify (a) the mark or term to which the objection was made, (b) the nature and basis of the objection, (c) when the objection was made, (d) the disposition of the objection, (e) the persons most knowledgeable about the objection, and (f) all documents relating to the objection.

17. Identify by title, index number and tribunal each civil action or *inter partes* proceeding in which Applicant or any business, company or other entity identified in response to Interrogatory No. 1 has been or is involved, other than the present opposition proceeding, that refers or relates in any way to Applicant's Mark, and for each such proceeding identify (a) the persons most knowledgeable thereof; (b) all documents relating thereto and (c) its disposition or current status.

18. Identify all agreements to which Applicant or any business, company, or other entity identified in response to Interrogatory No. 1 has been or is a party that refer or relate in any way to Applicant's Mark, including all amendments and modifications thereto, and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

19. Identify all facts that support Applicant's contention in its first Affirmative Defense that Opposer "fails to state facts sufficient to constitute a claim upon which relief can be granted," and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

20. Identify all facts that support Applicant's contention in its second Affirmative Defense that "the Opposition was filed without merit and for improper reasons, namely to hinder [Applicant's] business," and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

21. Identify all facts that support Applicant's contention in its third Affirmative Defense that "the Opposition is a frivolous matter," and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

22. Identify all facts that support Applicant's contention in its fourth Affirmative Defense that "Opposer is barred from any recovery sought in the Opposition because [Applicant's] mark is not confusingly similar to Opposer's registered trademarks," and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

23. Identify all facts that support Applicant's contention in its fifth Affirmative Defense that "Opposer is barred from any recovery sought in the Opposition because there is no likelihood of confusion between [Applicant's] mark and Opposer's registered trademarks," and identify (a) the persons most knowledgeable thereof, and (b) all documents relating thereto.

24. Identify, on an interrogatory-by-interrogatory basis, each person furnishing information upon which any part of any answer to these interrogatories is based, indicating the parts based on information so furnished by each such person, and whether such information is within the personal knowledge of such person, and if not within such person's knowledge, identify the source of the information so furnished.

DEFINITIONS

As used herein, the words and phrases set out below shall have the following meaning or meanings prescribed for them:

1. "Opposer" means Republic Technologies (NA), LLC, as well as its respective officers, directors, subsidiaries, divisions, representatives, employees, agents and assignees.
2. "Applicant" means Brooks Entertainment, Inc., as well as its respective officers, directors, subsidiaries, divisions, representatives, employees, agents and assignees.
3. "Subject Application" means U.S. Trademark Application Serial Number 85/5512,808 published in the Official Gazette on July 23, 2013.
4. "Opposer's Marks" means Opposer's marks involving the JOB designation bearing Federal Registration Nos. 073,124; 1,341,384; 2,422,747; 2,420,646; and 2,432,868.
5. "Applicant's Mark" means the S.O.B. mark as set forth in the Subject Application, and for use in connection with the goods and services designated therein.
6. "Person" means any individual, firm, partnership, corporation, proprietorship, association, or other organization or entity.
7. "Identify" means:
 - a. in connection with natural persons, state their full names, titles and job descriptions, if applicable, and their present or last known business and home addresses;

- b. in connection with firms, partnerships, corporations, proprietorships, associations or other entities, state their name, and each of their present or last known addresses;
- c. in connection with documents, describe the documents, setting forth their dates, titles, authors, addresses, parties thereto and the substance thereof, with such reasonable particularity as would be sufficient to permit them to be sought by subpoenas duces tecum or under the provisions of Rule 34 of the Federal Rules of Civil Procedure. Documents to be identified shall include both documents in your possession, custody and control and all other documents of which you have knowledge;
- d. in connection with oral statements and communications, (i) state when and where they were made; (ii) identify each of the makers and recipients thereof as well as all others present at the time such statement or communication was made; (iii) indicate the medium of communication; and (iv) state their substance.

8. "Document" or "documents" means all writings of any nature whatsoever or other means by which information is retained in retrievable form, as well as drafts and all nonidentical copies thereof, including but not limited to memoranda, reports, opinions, stenographic or handwritten notes, contracts, agreements, records, audio and video recordings, correspondence, communications, studies, summaries, surveys, statistical compilations, minutes, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, facsimiles, photographs of any nature, E-mail, electronically stored documents regardless of location or media upon which the data is stored, signage, drawings, sketches, blueprints, certificates of registration, labels, specimens, writings, and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure.

9. "Advertisement" means any printed or promotional materials including, but not limited to, flyers, brochures, story boards, newspaper items, scripts and audiotapes of radio advertising, scripts and videotapes of television advertising, email or other internet promotions and solicitations, and other materials printed, distributed or aired to the public or trade.

INSTRUCTIONS

1. The singular includes the plural and the plural includes the singular.
2. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of each document request all information that might otherwise be construed to be outside of its scope.
3. If the party or person to whom any Interrogatory is propounded, and his or her agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the request is propounded has the right to or does control or direct activities (hereinafter referred to as “you”) cannot answer the Interrogatory fully, completely, and in detail, after exercising due diligence to make inquiry and secure the information necessary, so state, and:
 - a. answer such Interrogatory to the extent possible;
 - b. specify the portion of such interrogatory that you are unable to answer fully, completely, and in detail; and
 - c. state the reason why such portion cannot be so answered.
4. If your response is qualified in any particular respect, set forth the details of such qualification.
5. All objections or answers to interrogatories which fail or refuse to fully respond to any interrogatory on the ground of any claim of privilege of any kind whatever shall:
 - a. state the nature of the claim of privilege;
 - b. state all facts relied upon in support of the claim of privilege or related thereto;
 - c. identify all documents related to the claim of privilege;
 - d. identify all persons having knowledge of any facts related to the claim of privilege; and

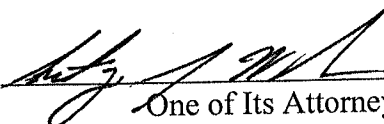
e. identify all events, transactions or occurrences related to the claim of privilege.

6. If, pursuant to Rule 33(d) of the Federal Rules of Civil Procedure, you opt to produce documents in lieu of a written response to an Interrogatory, indicate for each document provided the number of the Interrogatory to which it is responsive and the production number(s) of the documents identified for each response.

7. Discovery requests are continuous in nature and, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, you are under a duty to seasonably amend any prior response to an interrogatory if you learn that the response is in some material respect incomplete or incorrect, or if you are so ordered by the Court.

Respectfully submitted,

REPUBLIC TECHNOLOGIES (NA), LLC

By:  _____
One of Its Attorneys

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Firm ID 13739

Dated: January 10, 2014

CERTIFICATE OF SERVICE

I, Antony J. McShane, an attorney, hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT** to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036

via U.S. Mail on the date noted below:

Date: January 10, 2014

By: /Antony J. McShane/
One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

**OPPOSER'S FIRST REQUESTS FOR
PRODUCTION OF DOCUMENTS TO APPLICANT**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer, Republic Technologies (NA), LLC, hereby requests that Applicant, Brooks Entertainment, Inc., produce the documents and things described below at the offices of Neal, Gerber & Eisenberg, LLP, Two North LaSalle Street, Suite 1700, Chicago, Illinois 60602, or at such other place mutually agreed upon by the parties, within thirty (30) days. These requests are intended to be continuing in nature, and supplemental responses should be provided if Applicant learns that a response is incomplete or incorrect in any respect, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce documents sufficient to identify the following:
 - a. each state in which Applicant is licensed, registered or qualified to do business;
 - b. all other places where Applicant is licensed, registered or qualified to do business; and
 - c. all corporations or other entities in which Applicant has a controlling interest.
2. Produce documents sufficient to identify:
 - a. all products offered or intended to be offered by Applicant under Applicant's Mark;
 - b. the manner in which Applicant uses or intends to use Applicant's Mark;
 - c. the geographic scope of Applicant's efforts or intended efforts to market, sell, or otherwise provide products under Applicant's Mark;
 - d. the date on which Applicant first marketed or offered or intends to first market or offer products under Applicant's Mark; and
 - e. the date on which Applicant first sold or provided or intends to first sell or provide any product(s) under Applicant's Mark in: (i) intrastate commerce in the United States; (ii) interstate commerce in the United States; and (iii) foreign commerce (if applicable).
3. Produce all documents evidencing, referring, or relating to when Applicant first used Applicant's Mark or when Applicant intends to first use Applicant's Mark anywhere in the United States.
4. Produce documents sufficient to identify the channels of trade through which Applicant distributes or intends to distribute products or offers or intends to offer products under Applicant's Mark including, without limitation, documents sufficient to identify the customers, sales agents, dealerships, distributors or other outlets through which its products are sold or are intended to be sold under Applicant's Mark.

5. For each and every product offered by Applicant under Applicant's Mark, produce documents sufficient to identify:

- a. the prices Applicant charges or intends to charge for each such product;
- b. Applicant's annual sales (in units and dollars) and projected sales of each such product, by country and state; and
- c. Applicant's current inventory of each such product.

6. Produce all documents evidencing, referring, or relating to any sales or marketing plans for products sold or intended to be sold under Applicant's Mark.

7. Produce all documents evidencing, referring, or relating to:

- a. the manner by which Applicant advertises or promotes, has advertised or promoted, or intends to advertise or promote products under Applicant's Mark;
- b. any publications in which Applicant has placed or intends to place print advertisements, articles or other information concerning products Applicant offers or intends to offer under Applicant's Mark; and
- c. any Internet website referring or relating to Applicant's Mark, including but not limited to printouts of all such website pages.

8. Produce documents sufficient to identify the total annual expenditures incurred by Applicant for all advertising and marketing using or relating to Applicant's Mark.

9. Produce all forecasts for all anticipated expenditures to be incurred by Applicant for advertising and marketing using or relating to Applicant's Mark.

10. Produce all documents that disclose, describe, or otherwise relate to:

- a. the characteristics or profiles of the type of person or entity that purchases or otherwise receives products provided by Applicant under Applicant's Mark or the type of person or entity to whom Applicant intends to market and sell products under Applicant's Mark;
- b. any incident(s) wherein any persons or entities have indicated that they understood or believed that Opposer's business or products, and Applicant's business or products, were in any way affiliated, associated or connected with one another; and

- c. with regard to any such incident(s), produce all documents that disclose, describe or are related to:
 - (i) the place of such incident;
 - (ii) the date of such incident;
 - (iii) the identity of all persons or entities involved in or having knowledge of such incident, and the nature of their involvement or knowledge;
 - (iv) the products involved in such incident;
 - (v) the nature of the incident;
 - (vi) how the incident came to the attention of Applicant; and
 - (vii) efforts to ascertain or monitor such incidents.

11. Produce all documents constituting or relating to:

- a. misdirected correspondence (including electronic mail) or telephone calls received by Applicant that appear to be intended for Opposer; and
- b. Opposer or Opposer's products, including but not limited to message slips and telephone logs.

12. Produce all documents evidencing, referring, or relating to the selection or adoption of Applicant's Mark.

13. Produce documents sufficient to identify any person employed by or associated with Applicant who participated in or was involved in or responsible for the selection or adoption of Applicant's Mark, and with respect to each person so identified, the nature and scope of his or her involvement.

14. Produce all documents evidencing, referring, or relating to:

- a. whether Applicant has conducted or caused to be conducted a search, investigation or other inquiry, including any trademark search, concerning whether any similar marks to Applicant's Mark had been or were being used by other parties, or whether other parties had applied for or received registrations for such marks; and

- b. the decision by Applicant to apply or not to apply for registration of Applicant's Mark, including but not limited to all documents related to any discussions concerning such decision(s).

15. Produce all documents relating or referring to any prepared or actual filings with either the United States Patent and Trademark Office or any state's trademark office concerning any attempted registration by Applicant of Applicant's Mark.

16. Produce all documents that disclose, describe, constitute or otherwise relate to:

- a. statements or reports concerning the quality or perceived standards of quality of products offered, or to be offered, by Applicant under Applicant's Mark;
- b. any potential, threatened or actual civil action or *inter partes* proceeding relating to Applicant's Mark or involving products offered or to be offered by Applicant under Applicant's Mark; and
- c. any complaints concerning any products distributed, marketed or sold at any time by Applicant, whether under Applicant's Mark or otherwise.

17. Produce all documents evidencing, referring, or relating to:

- a. use by any third-party of any mark comprising Applicant's Mark or any other term that is visually or phonetically similar thereto; and
- b. any license or assignment agreement(s) to which Applicant is a party concerning Applicant's Mark.

18. Produce representative specimens of all packaging, hang tags, wrapping, promotional material, press or publicity releases, brochures, pamphlets, advertisements, point of sale displays, signs, trade show displays, labels, or other material that depicts or describes any products marketed, distributed, sold, or offered by Applicant under Applicant's Mark, or intended to be marketed, distributed, sold, or offered under Applicant's Mark, including all drafts, mock-ups and prototypes thereof.

19. Produce all documents evidencing, referring, or relating to the development, production, or placement of all advertisements, either actual or considered, depicting or

describing any products marketed, distributed, sold, or offered by Applicant under Applicant's Mark, or intended to be marketed, distributed, sold or offered by Applicant under Applicant's Mark.

20. Produce all documents evidencing, referring, or relating to test marketing conducted by Applicant, or on its behalf, of any products offered or intended to be offered under Applicant's Mark, including but not limited to any market surveys, analyses, or studies concerning the promotion, use, potential sale, or sale of such product.

22. Produce all documents that support Applicant's contention in its first Affirmative Defense that Opposer "fails to state facts sufficient to constitute a claim upon which relief can be granted."

23. Produce all documents that support Applicant's contention in its second Affirmative Defense that "the Opposition was filed without merit and for improper reasons, namely to hinder [Applicant's] business."

24. Produce all documents that support Applicant's contention in its third Affirmative Defense that "the Opposition is a frivolous matter."

25. Produce all documents that support Applicant's contention in its fourth Affirmative Defense that "Opposer is barred from any recovery sought in the Opposition because [Applicant's] mark is not confusingly similar to Opposer's registered trademarks."

26. Produce all documents that support Applicant's contention in its fifth Affirmative Defense that "Opposer is barred from any recovery sought in the Opposition because there is no likelihood of confusion between [Applicant's] mark and Opposer's registered trademarks."

27. Produce all agreements that relate in any way to Applicant's Mark, including all amendments and modifications thereto.

28. Produce all documents consulted in the preparation of, or that are requested to be identified in, Applicant's responses to Opposer's First Set of Interrogatories.

29. Produce all documents relating to any document retention policy of Applicant or the destruction of documents by Applicant at any time.

DEFINITIONS

As used herein, the words and phrases set out below shall have the following meaning or meanings prescribed for them:

1. "Opposer" means Republic Technologies (NA), LLC, its affiliates, parents, subsidiaries, and their respective divisions, representatives, employees, licensors, licensees, agents and assignees.

2. "Applicant" means Brooks Entertainment, Inc., its affiliates, parents, subsidiaries, and its respective divisions, representatives, employees, licensors, licensees, agents and assignees.

3. "Subject Application" means Applicant's U.S. Application Serial No. 85/551,808.

4. "Applicant's Mark" means the S.O.B. mark as set forth in the Subject Application, and for use in connection with the goods and services designated therein.

5. "Opposer's Marks" means Opposer's Marks involving the JOB designation bearing Federal Registration Nos. 073,124; 1,341,384; 2,422,747; 2,420,646; and 2,432,868.

6. "Applicant's Answer" means the document titled "Applicant's Answer to Notice of Opposition" filed by Applicant's counsel on September 20, 2013 in the present Opposition proceeding.

7. "Person" means any individual, firm, partnership, corporation, proprietorship, association, or other organization or entity.

8. "Identify" means:

- a. in connection with natural persons, state their full names, titles and job descriptions, if applicable, and their present or last known business and home addresses;
- b. in connection with firms, partnerships, corporations, proprietorships, associations or other entities, state their name, and each of their present or last known addresses;
- c. in connection with documents, describe the documents, setting forth their dates, titles, authors, addresses, parties thereto and the substance thereof, with such reasonable particularity as would be sufficient to permit them to be sought by subpoenas duces tecum or under the provisions of Rule 34 of the Federal Rules of Civil Procedure. Documents to be identified shall include both documents in your possession, custody and control and all other documents of which you have knowledge;
- d. in connection with oral statements and communications, (i) state when and where they were made; (ii) identify each of the makers and recipients thereof as well as all others present at the time such statement or communication was made; (iii) indicate the medium of communication; and (iv) state their substance.

9. "Documents" means any and all writings of any nature whatsoever or other means by which information is retained in retrievable form, as well as drafts and all non-identical copies thereof, including but not limited to memoranda, stenographic or handwritten notes, contracts, agreements, records, audio and video recordings, correspondence, communications, reports, studies, summaries, surveys, statistical compilations, minutes, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, facsimiles, E-mail, signage, certificates of registration, labels, specimens, writings, sketches, and computer disks, and any other documents as defined in Rule 34 of the Federal Rules of Civil Procedure.

10. "Relate to," "related to," or "relating to" means directly or indirectly mentioning or describing, pertaining to, connected with, or reflecting upon a state subject matter.

11. "Advertisement" means any printed or promotional materials including, but not limited to, flyers, brochures, story boards, newspaper items, scripts and audiotapes of radio advertising, scripts and videotapes of television advertising, email or other internet promotions and solicitations, and other materials printed, distributed or aired to the public or trade.

INSTRUCTIONS

1. The singular includes the plural and the plural includes the singular.
2. The terms "and" and "or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the document request all responses which might otherwise be construed to be outside its scope.
3. In responding to these requests, Applicant must make a diligent search of its records and of other papers and materials in its possession or available to it or its representatives, in accordance with the requirements of Rule 34 of the Federal Rules of Civil Procedure.
4. In answering these requests, Applicant is required to furnish all documents that are available to it, including documents and things in the possession, custody or control of any of Applicant's representatives, including, without limitation, Applicant's attorneys, accountants, advisers, agents, and other persons, directly or indirectly, employed by, or connected with Applicant or anyone else otherwise subject to Applicant's control.
5. Each request calls for production of each document and thing in its entirety, without abbreviation, redaction, expurgation or modification. In addition, each request requires production of any addenda, attachments, drafts, and non-identical copies as found or located either in Applicant's business or personal files, together with a copy of the descriptive file folders or database category in its entirety.

6. If any request cannot be complied with in full, it shall be complied with, to the extent possible, with a written explanation as to why full compliance is not possible. If there are no documents or things responsive to a particular request, Applicant must state so in writing.

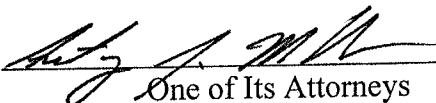
7. All objections to document requests in which Applicant fails or refuses to fully respond on the ground of any claim of privilege of any kind whatever shall:

- a. state the nature of the claim of privilege;
- b. state all facts relied upon in support of the claim of privilege or related thereto;
- c. identify all documents related to the claim of privilege;
- d. identify all persons having knowledge of any facts related to the claim of privilege; and
- e. identify all events, transactions or occurrences related to the claim of privilege.

8. Discovery requests are continuous in nature and, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure, you are under a duty to seasonably supplement any prior response to a Request for Production if you learn that the response is in some material respect incomplete or incorrect, or if you are so ordered by the Court.

Respectfully submitted,

REPUBLIC TECHNOLOGIES (NA), LLC

By: _____
One of Its Attorneys

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Firm ID 13739

Dated: January 10, 2014

CERTIFICATE OF SERVICE

I, Antony J. McShane, an attorney, hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S FIRST FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT** to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3,
Los Angeles, CA 90036

via U.S. Mail on the date noted below:

Date: January 10, 2014

By: /Antony J. McShane/
One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

EXHIBIT C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

OPPOSER'S SECOND SET OF INTERROGATORIES

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer, Republic Technologies (NA), LLC, hereby requests that Applicant, Brooks Entertainment, Inc., serve upon Opposer sworn answers to the interrogatories set forth below within thirty (30) days. These interrogatories are intended to be continuing in nature and any information that may be discovered subsequent to the service of Applicant's initial answers should be brought to the attention of Opposer through supplemental answers within thirty (30) days following such discovery pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

1. Describe in detail the "bona fide and effective industrial or commercial establishment" in the Dominican Republic relied upon by Applicant as the basis for Applicant's

attempt to register the S.O.B. mark.

2. Describe the physical, fixed place of business or places of business Applicant had in the Dominican Republic, including any offices or retail or production facilities, at the time Applicant's Dominican trademark registration was issued. If Applicant did not maintain a fixed place of business in the Dominican Republic at that time, so state.

3. Describe each physical, fixed place of business or places of business Applicant has had or currently has in the Dominican Republic, including any offices or retail or production facilities.

4. List all permanent, full-time or part-time personnel employed by Applicant at any time in the Dominican Republic, and set forth the dates and responsibilities of such employment.

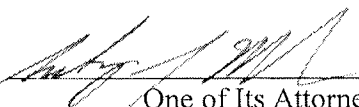
5. State the basis for Applicant's response to each and every one of Opposer's Requests for Admission that Applicant does not unequivocally admit.

DEFINITIONS AND INSTRUCTIONS

Opposer incorporates herein the definitions and instructions set forth in Opposer's First Request for Production of Documents to Applicant and Opposer's First Set of Interrogatories to Applicant as if fully set forth and repeated herein.

Respectfully submitted,

REPUBLIC TECHNOLOGIES (NA), LLC

By: _____
One of Its Attorneys

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Firm ID 13739

Dated: April 21, 2014

CERTIFICATE OF SERVICE

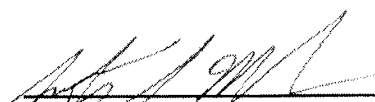
I, Antony J. McShane, an attorney, hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S SECOND SET OF INTERROGATORIES** to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036

via U.S. Mail on the date noted below:

Date: April 21, 2014

By:



One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

NGEDOCs: 019126.0702:2167687.1

NGEDOCs: 019126.0702:2167744.1

EXHIBIT D

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.
85/551,808 for S.O.B.

Published in the Official Gazette
on July 23, 2013

REPUBLIC TECHNOLOGIES (NA), LLC,

Opposer,

v.

BROOKS ENTERTAINMENT, INC.,

Applicant.

Opposition No. 91212024

OPPOSER'S SECOND REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, Opposer, Republic Technologies (NA), LLC, hereby requests that Applicant, Brooks Entertainment, Inc., produce the documents and things described below at the offices of Neal, Gerber & Eisenberg, LLP, Two North LaSalle Street, Suite 1700, Chicago, Illinois 60602, or at such other place mutually agreed upon by the parties, within thirty (30) days. These requests are intended to be continuing in nature, and supplemental responses should be provided if Applicant learns that a response is incomplete or incorrect in any respect, pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all invoices or other documents showing sales in the United States of products bearing the S.O.B. mark in 2011.

2. Produce all invoices or other documents showing sales in the United States of products bearing the S.O.B. mark in 2012.

3. Produce all invoices or other documents showing sales in the United States of products bearing the S.O.B. mark in 2013.

4. Produce all invoices or other documents showing sales in the United States of products bearing the S.O.B. mark in 2014.

5. Produce all documents supporting Applicant's representation to the Trademark Office that it had a "bona fide and effective industrial or commercial establishment" in the Dominican Republic at the time its Dominican trademark registration was issued.

6. For any Request to Admit in Opposer's First Set of Requests for Admissions not unequivocally admitted, produce all documents referring to, relating to or establishing any facts upon which Applicant bases its response to the request.

DEFINITIONS AND INSTRUCTIONS

Opposer incorporates herein the definitions and instructions set forth in Opposer's First Request for Production of Documents to Applicant and Opposer's First Set of Interrogatories to Applicant as if fully set forth and repeated herein.

Respectfully submitted,

REPUBLIC TECHNOLOGIES (NA), LLC

By: 

One of Its Attorneys

Antony J. McShane
Andrew S. Fraker
NEAL, GERBER & EISENBERG LLP
Two North LaSalle Street
Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
Firm ID 13739

Dated: April 21, 2014

CERTIFICATE OF SERVICE

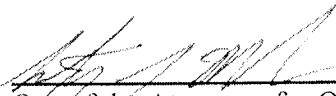
I, Antony J. McShane, an attorney, hereby certify that I caused a true and correct copy of the foregoing **OPPOSER'S SECOND SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS** to be served upon:

Richard B. Jefferson
M.E.T.A.L. Law Group, LLP
Museum Square
5757 Wilshire Blvd., PH 3
Los Angeles, CA 90036

via U.S. Mail on the date noted below:

Date: April 21, 2014

By:



One of the Attorneys for Opposer,
Republic Technologies (NA), LLC

NGEDOCs: 019126.0702:2167748.1